



PRICE DANIEL  
ATTORNEY GENERAL

OFFICE OF **PLEASE RETURN**  
**THE ATTORNEY GENERAL**  
AUSTIN, TEXAS **Central File Room**

March 31, 1948 **FAGAN DICKSON**  
FIRST ASSISTANT

Hon. R. L. Whitehead  
Criminal District Attorney  
124th Judicial District  
Longview, Texas

Opinion No. V-531

Re: Effect of school consolidation election held under Article 2806, V. C. S., as amended, where one or more districts vote against proposition.

Dear Sir:

We refer to your recent letter wherein you advise that there is to be held in Gregg County an election, under Article 2806, V. C. S., as amended, to determine whether four common school districts will be consolidated into one district. You request our opinion on the following question:

If two of the districts vote in favor of the consolidation and the other two against it, would the effect of the election be to consolidate the two districts who voted in favor thereof?

Article 2806, V. C. S., as amended, provides, in part:

"On the petition of twenty (20) or a majority of the legally qualified voters of each of several contiguous common school districts, or contiguous independent school districts, praying for the consolidation of such districts for school purposes, the County Judge shall issue an order for an election to be held on the same day in each such district. The County Judge shall give notice of the date of such elections by publication of the order in some newspaper published in the county for twenty (20) days prior to the date on which such elections are ordered, or by posting a notice of such elections in each of the districts, or by both such

publication and posted notice. The Commissioners' Court shall, at its next meeting, canvass the returns of such elections, and if the votes cast in each and all districts show a majority in each district voting separately in favor of such consolidation, the Court shall declare the school districts consolidated. " (Emphasis ours)

Under the express provisions of said statute the consolidation of the four districts in question can be effected only when the proposed consolidation has carried by a majority vote in each district at an election held separately in each of the interested school districts. *McGehee v. Boedeker*, 200 S. W. (2d) 697; *State v. Lester*, 50 S. W. (2d) 386, writ refused; *Consolidated Common School Districts No. 5 v. Wood*, 112 S. W. (2d) 231.

The proposed election being called on the proposition and for the determination of whether four certain contiguous common school districts shall be consolidated to form a single new consolidated school district, the Commissioners' Court would be without authority to declare a consolidation of any less number of districts than the four voting at the same election. Such action, if attempted, would clearly be at variance with the very purpose for which the election was called and with the petition which vests authority in the County Judge to call an election only for the consolidation of the four designated contiguous common school districts. Under Article 2806, the County Judge and Commissioners' Court are given express independent duties to perform; and neither has any other power, function, or duties than those specified in relation to such election. *McLemore v. Stanford*, 176 S. W. (2d) 770.

#### SUMMARY


An election being called under Article 2806, V. C. S., as amended, for the consolidation of four contiguous school districts, wherein two districts vote in favor of and two against consolidation, the Commissioners'

Hon. R. L. Whitehead, page 3 (V-531)

Court would be without authority to declare consolidated the two districts voting therefor.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By   
Chester E. Ollison  
Assistant

CEO:mw

APPROVED:

  
PRICE DANIEL  
ATTORNEY GENERAL